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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA and  
CHARLES DUFF, Revenue Officer,  
Internal Revenue Service,

Petitioners,

NO. Misc S-09-69 MCE KJM

v.

MAX SOLIZ, JR.,

ORDER AND

Respondent.

FINDINGS AND RECOMMENDATIONS

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This matter came on for hearing before the undersigned on September 30, 2009. Yoshinori Himel appeared for petitioners; respondent Max Soliz, Jr. appeared in propria persona. Revenue Officer Charles Duff was duly sworn and fully direct-examined. Respondent declined to cross-examine. Respondent Max Soliz, Jr. was duly sworn, testified, and was cross-examined at the hearing. Petitioner's Exhibits 1 through 4 were admitted. Respondent submitted the affidavit of Daniel Gray, which petitioner moved to strike, and which motion is denied.

The Petition to Enforce Internal Revenue Service Summons initiating this proceeding seeks to enforce one summons, which is in aid of Revenue Officer Charles Duff's investigation for tax determination. On August 25, 2009, this court issued an Order to Show Cause ("OSC"), shifting to respondent the burden of rebutting any of the four requirements of

1 United States v. Powell, 379 U.S. 48, 57-58 (1964). The court has reviewed the petition and  
2 documents in support and the opposition, and considered the testimony provided and arguments  
3 made at the hearing. Based on the uncontroverted verification and testimony of Revenue Officer  
4 Duff, testimony of respondent Max Soliz, Jr., and the entire record, the undersigned makes the  
5 following findings:

6 (1) The summons issued by Revenue Officer Charles Duff to respondent Max  
7 Soliz, Jr., as Chief Financial Officer of Alta Sierra Insurance Services, Inc. and served on April 1,  
8 2009, seeking testimony and production of documents and records in respondent's possession,  
9 were in good faith and for a legitimate purpose under I.R.C. § 7602. Specifically, the summons  
10 was for the determination of financial information to aid in the determination of corporate  
11 income tax liabilities for Alta Sierra Insurance Services, Inc., for the taxable years ending  
12 December 31, 2007 and December 31, 2008.

13 (2) The information sought by the summons is relevant to that purpose.

14 (3) The information sought is not already in the possession of the Internal  
15 Revenue Service.

16 (4) The administrative steps required by the Internal Revenue Code have been  
17 followed.

18 (5) There is no evidence of referral of this case by the Internal Revenue Service to  
19 the Department of Justice for criminal prosecution.

20 (6) The verified petition and its exhibits make a prima facie showing of  
21 satisfaction of the requirements of United States v. Powell, 379 U.S. 48, 57-58 (1964).

22 (7) The burden shifted to respondent, Max Soliz, Jr., to rebut that prima facie  
23 showing.

24 (8) Despite respondent's appearance at the hearing, respondent presented no  
25 argument or evidence sufficient to rebut the prima facie showing.

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1 In light of the above, IT IS HEREBY ORDERED THAT the Clerk shall serve this  
2 order and future orders on Mr. Max Soliz, Jr., 16967 Alexandra Way, Grass Valley, California,  
3 95949.

4 Accordingly, it is hereby RECOMMENDED that the summons issued to  
5 respondent, Max Soliz, Jr., be enforced, and that respondent be ordered to appear at 4330 Watt  
6 Ave., Sacramento, California, before Revenue Officer Charles Duff or his designated  
7 representative, within twenty-one days of the date of the filing by the District Judge of an order  
8 adopting these Findings and Recommendations or otherwise enforcing the summons, or at an  
9 alternate time and date to be set by Revenue Officer Duff, then and there to be sworn, to give  
10 testimony, and to produce for examining and copying the books, checks, records, papers and  
11 other data demanded by the summonses, the examination to continue from day to day until  
12 completed.

13 These findings and recommendations are submitted to the United States District  
14 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty  
15 days after being served with these findings and recommendations, plaintiff may file written  
16 objections with the court. The document should be captioned "Objections to Magistrate Judge's  
17 Findings and Recommendations." Plaintiff is advised that failure to file objections within the  
18 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951  
19 F.2d 1153 (9th Cir. 1991).

20 DATED: October 6, 2009.

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24 U.S. MAGISTRATE JUDGE